

## **IC 16-36**

### **ARTICLE 36. MEDICAL CONSENT**

#### **IC 16-36-1**

##### **Chapter 1. Health Care Consent**

#### **IC 16-36-1-1**

##### **"Health care"**

Sec. 1. As used in this chapter, "health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition. The term includes admission to a health care facility.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-1-2**

##### **"Representative"**

Sec. 2. As used in this chapter, "representative" means:

- (1) an individual at least eighteen (18) years of age;
- (2) a corporation;
- (3) a trust;
- (4) a limited liability company;
- (5) a partnership;
- (6) a business trust;
- (7) an estate;
- (8) an association;
- (9) a joint venture;
- (10) a government or political subdivision;
- (11) an agency;
- (12) an instrumentality; or
- (13) any other legal or commercial entity;

appointed to consent to health care of another under this chapter.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.5.*

#### **IC 16-36-1-3**

##### **Consent for own health care; minor's blood donation**

Sec. 3. (a) Except as provided in subsections (b) through (d), unless incapable of consenting under section 4 of this chapter, an individual may consent to the individual's own health care if the individual is:

- (1) an adult; or
- (2) a minor and:
  - (A) is emancipated;
  - (B) is:
    - (i) at least fourteen (14) years of age;
    - (ii) not dependent on a parent for support;
    - (iii) living apart from the minor's parents or from an individual in loco parentis; and
    - (iv) managing the minor's own affairs;

- (C) is or has been married;
- (D) is in the military service of the United States; or
- (E) is authorized to consent to the health care by any other statute.

(b) A person at least seventeen (17) years of age is eligible to donate blood in a voluntary and noncompensatory blood program without obtaining parental permission.

(c) A person who is sixteen (16) years of age is eligible to donate blood in a voluntary and noncompensatory blood program if the person has obtained written permission from the person's parent.

(d) An individual who has, suspects that the individual has, or has been exposed to a venereal disease is competent to give consent for medical or hospital care or treatment of the individual.

*As added by P.L.2-1993, SEC.19. Amended by P.L.4-2010, SEC.1.*

#### **IC 16-36-1-4**

##### **Incapacity to consent; invalid consent**

Sec. 4. (a) An individual described in section 3 of this chapter may consent to health care unless, in the good faith opinion of the attending physician, the individual is incapable of making a decision regarding the proposed health care.

(b) A consent to health care under section 5, 6, or 7 of this chapter is not valid if the health care provider has knowledge that the individual has indicated contrary instructions in regard to the proposed health care, even if the individual is believed to be incapable of making a decision regarding the proposed health care at the time the individual indicates contrary instructions.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-1-5**

##### **Persons authorized to consent for incapable parties; minors**

Sec. 5. (a) If an individual incapable of consenting under section 4 of this chapter has not appointed a health care representative under section 7 of this chapter or the health care representative appointed under section 7 of this chapter is not reasonably available or declines to act, consent to health care may be given:

- (1) by a judicially appointed guardian of the person or a representative appointed under section 8 of this chapter; or
- (2) by a spouse, a parent, an adult child, or an adult sibling, unless disqualified under section 9 of this chapter, if:
  - (A) there is no guardian or other representative described in subdivision (1);
  - (B) the guardian or other representative is not reasonably available or declines to act; or
  - (C) the existence of the guardian or other representative is unknown to the health care provider; or
- (3) by the individual's religious superior, if the individual is a member of a religious order and:
  - (A) there is no guardian or other representative described in

- subdivision (1);
  - (B) the guardian or other representative is not reasonably available or declines to act; or
  - (C) the existence of the guardian or other representative is unknown to the health care provider.
- (b) Consent to health care for a minor not authorized to consent under section 3 of this chapter may be given by any of the following:
- (1) A judicially appointed guardian of the person or a representative appointed under section 8 of this chapter.
  - (2) A parent or an individual in loco parentis if:
    - (A) there is no guardian or other representative described in subdivision (1);
    - (B) the guardian or other representative is not reasonably available or declines to act; or
    - (C) the existence of the guardian or other representative is unknown to the health care provider.
  - (3) An adult sibling of the minor if:
    - (A) there is no guardian or other representative described in subdivision (1);
    - (B) a parent or an individual in loco parentis is not reasonably available or declines to act; or
    - (C) the existence of the parent or individual in loco parentis is unknown to the health care provider.
- (c) A representative delegated authority to consent under section 6 of this chapter has the same authority and responsibility as the individual delegating the authority.
- (d) An individual authorized to consent for another under this section shall act in good faith and in the best interest of the individual incapable of consenting.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.6.*

#### **IC 16-36-1-6**

##### **Delegated authority to consent on behalf of incapable party**

Sec. 6. (a) A representative authorized to consent to health care for another under section 5(a)(2), 5(b)(2), or 5(b)(3) of this chapter who for a time will not be reasonably available to exercise the authority may delegate the authority to consent during that time to another representative not disqualified under section 9 of this chapter. The delegation:

- (1) must be in writing;
  - (2) must be signed by the delegate;
  - (3) must be witnessed by an adult; and
  - (4) may specify conditions on the authority delegated.
- (b) Unless the writing expressly provides otherwise, the delegate may not delegate the authority to another representative.
- (c) The delegate may revoke the delegation at any time by notifying orally or in writing the delegate or the health care provider.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.7.*

#### **IC 16-36-1-7**

##### **Appointed representative; qualifications; conditions; effective date; duties; resignation; revocation of appointment**

Sec. 7. (a) An individual who may consent to health care under section 3 of this chapter may appoint another representative to act for the appointor in matters affecting the appointor's health care.

(b) An appointment and any amendment must meet the following conditions:

- (1) Be in writing.
- (2) Be signed by the appointor or by a designee in the appointor's presence.
- (3) Be witnessed by an adult other than the representative.

(c) The appointor may specify in the appointment appropriate terms and conditions, including an authorization to the representative to delegate the authority to consent to another.

(d) The authority granted becomes effective according to the terms of the appointment.

(e) The appointment does not commence until the appointor becomes incapable of consenting. The authority granted in the appointment is not effective if the appointor regains the capacity to consent.

(f) Unless the appointment provides otherwise, a representative appointed under this section who is reasonably available and willing to act has priority to act in all matters of health care for the appointor, except when the appointor is capable of consenting.

(g) In making all decisions regarding the appointor's health care, a representative appointed under this section shall act as follows:

- (1) In the best interest of the appointor consistent with the purpose expressed in the appointment.
- (2) In good faith.

(h) A health care representative who resigns or is unwilling to comply with the written appointment may not exercise further power under the appointment and shall so inform the following:

- (1) The appointor.
- (2) The appointor's legal representative if one is known.
- (3) The health care provider if the representative knows there is one.

(i) An individual who is capable of consenting to health care may revoke:

- (1) the appointment at any time by notifying the representative orally or in writing; or
- (2) the authority granted to the representative by notifying the health care provider orally or in writing.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.8.*

#### **IC 16-36-1-8**

##### **Probate court petition; hearing; notice; findings**

Sec. 8. (a) A health care provider or any interested person (as defined in IC 30-5-2-6) may petition the probate court in the county

where the individual who is the subject of the petition is present for purposes of receiving health care to:

(1) make a health care decision or order health care for an individual incapable of consenting; or

(2) appoint a representative to act for the individual.

(b) Reasonable notice of the time and place of hearing a petition under this section must be given to the following:

(1) The individual incapable of consenting.

(2) Anyone having the care and custody of the individual.

(3) Those persons in the classes described in section 5 of this chapter who are reasonably available and who are designated by the court.

(c) The probate court may modify or dispense with notice and hearing if the probate court finds that delay will have a serious, adverse effect upon the health of the individual.

(d) The probate court may order health care, appoint a representative to make a health care decision for the individual incapable of consenting to health care with the limitations on the authority of the representative as the probate court considers appropriate, or order any other appropriate relief in the best interest of the individual if the probate court finds the following:

(1) A health care decision is required for the individual.

(2) The individual is incapable of consenting to health care.

(3) There is no person authorized to consent or a person authorized to consent to health care:

(A) is not reasonably available;

(B) declines to act; or

(C) is not acting in the best interest of the individual in need of health care.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.9.*

#### **IC 16-36-1-9**

##### **Disqualification of person to consent for patient or health care recipient**

Sec. 9. (a) An individual who may consent to the individual's own health care under section 3 of this chapter may disqualify others from consenting to health care for the individual.

(b) A disqualification must meet the following conditions:

(1) Be in writing.

(2) Be signed by the individual.

(3) Designate those disqualified.

(c) A health care provider who knows of a written disqualification may not accept consent to health care from a disqualified individual.

(d) An individual who knows that the individual has been disqualified to consent to health care for another may not act for the other under this chapter.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-1-10**

**Immunity of health care providers or consenting persons; good faith requirement**

Sec. 10. (a) A health care provider acting or declining to act in reliance on the consent or refusal of consent of a representative who the provider believes in good faith is authorized to consent to health care is not subject to:

- (1) criminal prosecution;
- (2) civil liability; or
- (3) professional disciplinary action;

on the ground that the representative who consented or refused to consent lacked authority or capacity.

(b) A health care provider who believes in good faith that a representative is incapable of consenting is not subject to:

- (1) criminal prosecution;
- (2) civil liability; or
- (3) professional disciplinary action;

for failing to follow the representative's direction.

(c) A person who in good faith believes the representative is authorized to consent or refuse to consent to health care for another under this chapter or another statute is not subject to:

- (1) criminal prosecution; or
- (2) civil liability if the person exercises due care;

on the ground that the representative lacked authority to consent.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.10.*

**IC 16-36-1-11**

**Disclosure of medical information to representative authorized to consent**

Sec. 11. (a) A representative under this chapter has the same right that the authorizing individual has to receive information relevant to the contemplated health care and to consent to the disclosure of medical records to a health care provider.

(b) Disclosure of information regarding contemplated health care to a representative is not a waiver of an evidentiary privilege or of the right to assert confidentiality.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.11.*

**IC 16-36-1-12**

**Effect of chapter on other law; personal liability of representatives for costs of care**

Sec. 12. (a) This chapter does not affect Indiana law concerning an individual's authorization to do the following:

- (1) Make a health care decision for the individual or another individual.
- (2) Provide, withdraw, or withhold medical care necessary to prolong or sustain life.

(b) This chapter does not affect the requirements in any other Indiana law concerning consent to observation, diagnosis, treatment, or hospitalization for a mental illness.

(c) This chapter does not authorize a representative to consent to any health care that is prohibited under Indiana law.

(d) This chapter does not affect any requirement of notice to others of proposed health care under any other Indiana law.

(e) This chapter does not affect Indiana law concerning the following:

(1) The standard of care of a health care provider required in the provision of health care.

(2) When consent is required for health care.

(3) Elements of informed consent for health care.

(4) Other methods of consent authorized by Indiana law.

(5) Health care being provided in an emergency without consent.

(f) This chapter does not prevent an individual capable of consenting to the individual's own health care or to the health care of another under this chapter, including those authorized under sections 5 through 7 of this chapter, from consenting to health care administered in good faith under religious tenets of the individual requiring health care.

(g) A representative consenting to health care for an individual under this chapter does not become personally liable for the cost of the health care by virtue of that consent.

*As added by P.L.2-1993, SEC.19. Amended by P.L.81-2015, SEC.12.*

#### **IC 16-36-1-13**

##### **Euthanasia**

Sec. 13. This chapter does not authorize euthanasia.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-1-14**

##### **Incorporation of IC 30-5 by reference; appointment of health care representative**

Sec. 14. (a) The health care consent provisions under IC 30-5 are incorporated by reference into this chapter to the extent the provisions under IC 30-5 do not conflict with explicit requirements under this chapter.

(b) With respect to the written appointment of a health care representative under section 7 of this chapter, whenever the appointment authorizes health care to be withdrawn or withheld from an individual with a terminal condition (as defined in IC 16-36-4-5), the language in IC 30-5-5-17 must be included in the appointment in substantially the same form.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-1-15**

##### **Separate consent for telemedicine services not required**

Sec. 15. A health care provider (as defined in IC 16-18-2-163(a)) may not be required to obtain a separate additional written health care consent for the provision of telemedicine services.

*As added by P.L.185-2015, SEC.17.*



## **IC 16-36-1.5**

### **Chapter 1.5. Consent for Mental Health Services**

#### **IC 16-36-1.5-1**

##### **Applicability of chapter**

Sec. 1. This chapter does not apply when an individual is detained or committed under IC 12-26-4, IC 12-26-5, IC 12-26-6, or IC 12-26-7.

*As added by P.L.145-1996, SEC.3.*

#### **IC 16-36-1.5-2**

##### **"Mental health provider" defined**

Sec. 2. As used in this chapter, "mental health provider" means any of the following:

- (1) A registered nurse or licensed practical nurse licensed under IC 25-23.
- (2) A clinical social worker licensed under IC 25-23.6-5.
- (3) A marriage and family therapist licensed under IC 25-23.6-8.
- (4) A psychologist licensed under IC 25-33.
- (5) A school psychologist licensed by the Indiana state board of education.
- (6) An individual who claims to be a mental health provider.

*As added by P.L.145-1996, SEC.3. Amended by P.L.149-1997, SEC.1; P.L.147-1997, SEC.3.*

#### **IC 16-36-1.5-3**

##### **"Patient" defined**

Sec. 3. As used in this chapter, "patient" means a person who is the recipient of mental health services.

*As added by P.L.145-1996, SEC.3.*

#### **IC 16-36-1.5-4**

##### **Mental health provider; consent from patient required**

Sec. 4. Before providing mental health services, a mental health provider must obtain consent from each patient.

*As added by P.L.145-1996, SEC.3. Amended by P.L.111-1997, SEC.7; P.L.149-1997, SEC.2; P.L.253-1997(ss), SEC.19.*

#### **IC 16-36-1.5-4.5**

##### **Physician; written consent from patient required**

Sec. 4.5. Before providing mental health services, a physician who is licensed under IC 25-22.5 must obtain consent from each patient as provided in IC 34-18-12.

*As added by P.L.149-1997, SEC.3. Amended by P.L.1-1998, SEC.119.*

#### **IC 16-36-1.5-5**

##### **Consent by mentally incompetent patient**

Sec. 5. (a) This section applies to a patient who:

- (1) receives mental health services; and
- (2) is mentally incompetent.

(b) A patient described in subsection (a) shall provide consent for mental health treatment through the informed consent of one (1) of the following:

- (1) The patient's legal guardian or other court appointed representative.
- (2) The patient's health care representative under IC 16-36-1.
- (3) An attorney in fact for health care appointed under IC 30-5-5-16.
- (4) The patient's health care representative acting in accordance with the patient's psychiatric advance directive as expressed in a psychiatric advance directive executed under IC 16-36-1.7.

*As added by P.L.145-1996, SEC.3. Amended by P.L.149-1997, SEC.4; P.L.16-2004, SEC.2.*

#### **IC 16-36-1.5-6**

##### **Compliance with chapter**

Sec. 6. In order to comply with this chapter, a mental health provider needs to obtain only one (1) consent for mental health services for a patient while admitted in or treated as an outpatient at the main facility or a clinic of any of the following:

- (1) A psychiatric hospital (as defined in IC 12-7-2-151).
- (2) A hospital (as defined in IC 16-18-2-179(b)).
- (3) A community mental health center (as defined in IC 12-7-2-38).

*As added by P.L.145-1996, SEC.3. Amended by P.L.149-1997, SEC.5.*

#### **IC 16-36-1.5-7**

##### **Rebuttable presumption of informed consent**

Sec. 7. If a patient's written consent is:

- (1) signed by the patient or the patient's authorized representative;
- (2) witnessed by an individual who is at least eighteen (18) years of age; and
- (3) explained, orally or in the written consent, to the patient or the patient's authorized representative before a treatment, procedure, examination, or test;

a rebuttable presumption is created that the consent is an informed consent.

*As added by P.L.145-1996, SEC.3.*

#### **IC 16-36-1.5-8**

##### **Repealed**

*(Repealed by P.L.149-1997, SEC.8.)*

#### **IC 16-36-1.5-9**

##### **Repealed**

*(Repealed by P.L.149-1997, SEC.8.)*

**IC 16-36-1.5-10**

**Information to be provided by mental health provider**

Sec. 10. A mental health provider shall inform each patient of the mental health provider about:

- (1) the mental health provider's training and credentials;
- (2) the reasonably foreseeable risks and relative benefits of proposed treatments and alternative treatments; and
- (3) the patient's right to withdraw consent for treatment at any time.

*As added by P.L.149-1997, SEC.6.*

## **IC 16-36-1.7**

### **Chapter 1.7. Psychiatric Advance Directives**

#### **IC 16-36-1.7-0.5**

##### **Inapplicability to certain mentally ill individuals**

Sec. 0.5. This chapter does not apply when an individual is detained or committed under IC 12-26-4, IC 12-26-5, IC 12-26-6, or IC 12-26-7.

*As added by P.L.16-2004, SEC.3.*

#### **IC 16-36-1.7-1**

##### **"Psychiatric advance directive" defined**

Sec. 1. As used in this chapter, "psychiatric advance directive" means a written instrument that expresses the individual's preference and consent to the administration of treatment measures for a specific diagnosis for the care and treatment of the individual's mental illness during subsequent periods of incapacity.

*As added by P.L.16-2004, SEC.3.*

#### **IC 16-36-1.7-2**

##### **Requirement to execute a directive; information required; compliance**

Sec. 2. (a) An individual who has capacity may execute a psychiatric advance directive.

(b) The psychiatric advance directive must include the following:

(1) The name of the individual entering into the psychiatric advance directive.

(2) The name of the treatment program and the sponsoring facility or institution in which the individual is enrolled, if applicable.

(3) The name, address, and telephone number of:

(A) the individual's treating physician; or

(B) other treating mental health personnel.

(4) The signature of the individual entering into the psychiatric advance directive.

(5) The date on which the individual signed the psychiatric advance directive.

(6) The name, address, and telephone number of the designated health care representative.

(7) The signature of the psychiatrist treating the individual entering into the psychiatric advance directive, attesting to:

(A) the appropriateness of the individual's preferences stated in the psychiatric advance directive; and

(B) the capacity of the individual entering into the psychiatric advance directive.

(c) The psychiatric advance directive must comply with and is subject to the requirements and provisions of IC 16-36-1.

*As added by P.L.16-2004, SEC.3.*

### **IC 16-36-1.7-3**

#### **Specifications by individuals**

Sec. 3. An individual may specify in the psychiatric advance directive treatment measures, including:

- (1) admission to an inpatient setting;
- (2) the administration of prescribed medication:
  - (A) orally; or
  - (B) by injection;
- (3) physical restraint;
- (4) seclusion;
- (5) electroconvulsive therapy; or
- (6) mental health counseling;

for the care and treatment of the individual's mental illness during a period when the individual is incapacitated.

*As added by P.L.16-2004, SEC.3.*

### **IC 16-36-1.7-4**

#### **Liability**

Sec. 4. A person who:

- (1) treats an individual who has executed a psychiatric advance directive; and
- (2) is not aware that the individual being treated has executed a valid psychiatric advance directive;

is not subject to civil or criminal liability based on an allegation that the person did not comply with the psychiatric advance directive.

*As added by P.L.16-2004, SEC.3.*

### **IC 16-36-1.7-5**

#### **Treatment by attending physician**

Sec. 5. This chapter does not preclude an attending physician from treating the patient in a manner that is of the best interest of the patient or another individual.

*As added by P.L.16-2004, SEC.3.*

## **IC 16-36-2**

### **Chapter 2. Consent to Autopsy**

#### **IC 16-36-2-1**

##### **Autopsy defined**

Sec. 1. For purposes of this chapter, "autopsy" means the dissection of a dead body for the purpose of ascertaining the cause, seat, and nature of a disease or for the purpose of inquiring into the cause of death.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-2-2**

##### **Form of consent**

Sec. 2. For the purpose of this chapter, the consent to an autopsy must contain the purpose of and extent of the dissection so authorized and may be obtained only by the use of at least one (1) of the following:

- (1) A written instrument.
- (2) A telegram.
- (3) A witnessed telephone conversation.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-2-3**

##### **Persons authorized to give consent**

Sec. 3. (a) For the purpose of this chapter, consent for a licensed physician to conduct an autopsy of the body of a deceased person is sufficient when given by the following persons if the persons survive the deceased:

- (1) By the surviving spouse. However, if the deceased and the surviving spouse were legally separated at the date of death, the survivor is not considered a surviving spouse.
- (2) If there is no surviving spouse, then by any one (1) adult child of the deceased.
- (3) If there is no surviving spouse or adult child of the deceased, then by one (1) parent of the deceased.
- (4) If there is no surviving spouse, adult child, or parent and there is an adult who is next of kin of the deceased residing in the county in which the deceased died a resident, then by any one (1) next of kin.
- (5) If there is no surviving spouse, adult child, parent, or next of kin, then by any person assuming custody of and financial responsibility for the burial of the body.

(b) If there is more than one (1) person authorized to consent, consent of one (1) of the persons is sufficient.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-2-4**

##### **Conclusiveness of consent**

Sec. 4. Consent to an autopsy in accordance with this chapter is conclusive as to any rights in the body of a deceased person as against any claim by any other person, but only for the purpose of performing the autopsy.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-2-5**

##### **Effect of chapter on other laws**

Sec. 5. This chapter supplements the laws concerning autopsies and does not do any of the following:

- (1) Repeal, modify, or amend laws concerning autopsies.
- (2) Require consent for a coroner to perform an autopsy in the discharge of the coroner's duties.

*As added by P.L.2-1993, SEC.19.*

### **IC 16-36-3**

#### **Chapter 3. Consent to Medical Treatment of Incompetent**

### **IC 16-36-3-1**

#### **Appropriate facility defined**

Sec. 1. As used in this chapter, "appropriate facility" has the meaning set forth in IC 12-7-2-82(3).

*As added by P.L.2-1993, SEC.19.*

### **IC 16-36-3-2**

#### **Superintendent defined**

Sec. 2. As used in this chapter, "superintendent" has the meaning set forth in IC 12-7-2-188(3).

*As added by P.L.2-1993, SEC.19.*

### **IC 16-36-3-3**

#### **Methods of consent**

Sec. 3. The methods of consent set forth in this chapter do not exclude other lawful methods of consent or require consent in an emergency.

*As added by P.L.2-1993, SEC.19.*

### **IC 16-36-3-4**

#### **Consent by superintendent of facility**

Sec. 4. Consent to medical or surgical treatment of a patient at an appropriate facility may be given by the superintendent under the procedures in this chapter.

*As added by P.L.2-1993, SEC.19.*

### **IC 16-36-3-5**

#### **Second medical opinion**

Sec. 5. If the superintendent and the patient's treating physician determine that:

- (1) the patient is incompetent to give informed consent to medical or surgical treatment, even though the patient has never been so adjudicated by a court; and
- (2) the treatment is medically necessary;

the superintendent shall obtain a second opinion on the issues listed in subdivisions (1) and (2) from a licensed physician independent of the appropriate facility.

*As added by P.L.2-1993, SEC.19.*

### **IC 16-36-3-6**

#### **Second opinion specialist list**

Sec. 6. In obtaining a second opinion as required by section 5 of this chapter, the superintendent shall compile a list of licensed physicians, organized by specialty. The superintendent must use an appropriate specialist from the list whenever possible. The physician



chosen to give a second opinion must not be the same physician later chosen to perform the surgery that was the subject of the second opinion, unless an emergency exists.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-3-7**

##### **Notice to relatives or friends of patient**

Sec. 7. The superintendent shall attempt to notify by certified mail any known relatives or friends of the patient of the patient's condition, the treatment determined to be necessary by the superintendent and the treating physician, and the result of the independent second opinion. To the extent possible given the urgency of the circumstances, the superintendent shall allow a reasonable time within which to receive responses of persons notified and shall consider the responses received before taking final action.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-3-8**

##### **Concurring second opinion; procedure**

Sec. 8. If the superintendent has followed the procedures in sections 4, 5, 6, and 7 of this chapter and the second opinion obtained under section 5 of this chapter concurs with the original determination of the superintendent and the patient's treating physician, the superintendent may give consent to the medical or surgical treatment of the patient.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-3-9**

##### **Superintendent immune from liability**

Sec. 9. A superintendent who, without malice, bad faith, or negligence, discloses confidential information in connection with the superintendent's compliance with section 7 of this chapter or consents to medical or surgical treatment of a patient after following the procedures required by this chapter is immune from any civil or criminal liability that might otherwise be imposed as a result of disclosing confidential information or giving or withholding the consent.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-3-10**

##### **Report of medical treatments approved**

Sec. 10. The superintendent shall compile a report of all medically necessary treatments approved under this chapter during each calendar quarter and send the report to the director of the division of mental health and addiction or the director of the division of disability and rehabilitative services not more than one (1) month after the end of that quarter. The report must contain the following information:

- (1) The name of the patient.

- (2) The type of action taken.
- (3) The date of the action.
- (4) The reason for the action.
- (5) The names of the treating physician, the physician independent of the appropriate facility, and any other physician who entered an opinion that was contrary to the treating physician's opinion.

*As added by P.L.2-1993, SEC.19. Amended by P.L.40-1994, SEC.65; P.L.215-2001, SEC.83; P.L.141-2006, SEC.89.*

## **IC 16-36-4**

### **Chapter 4. Living Wills and Life Prolonging Procedures**

#### **IC 16-36-4-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The amendments made to sections 1, 10, and 13 of this chapter by P.L.99-1994 do not apply to a living will declaration executed before July 1, 1994.

*As added by P.L.220-2011, SEC.315.*

#### **IC 16-36-4-1**

##### **Life prolonging procedure defined**

Sec. 1. (a) As used in this chapter, "life prolonging procedure" means any medical procedure, treatment, or intervention that does the following:

- (1) Uses mechanical or other artificial means to sustain, restore, or supplant a vital function.
- (2) Serves to prolong the dying process.

(b) The term does not include the performance or provision of any medical procedure or medication necessary to provide comfort care or to alleviate pain.

*As added by P.L.2-1993, SEC.19. Amended by P.L.99-1994, SEC.1.*

#### **IC 16-36-4-2**

##### **Life prolonging procedures will declarant defined**

Sec. 2. As used in this chapter, "life prolonging procedures will declarant" means a person who has executed a life prolonging procedures will declaration under section 11 of this chapter.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-4-3**

##### **Living will declarant defined**

Sec. 3. As used in this chapter, "living will declarant" means a person who has executed a living will declaration under section 10 of this chapter.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-4-4**

##### **Qualified patient defined**

Sec. 4. As used in this chapter, "qualified patient" means a patient who has been certified as a qualified patient under section 13 of this chapter.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-4-5**

##### **Terminal condition defined**

Sec. 5. As used in this chapter, "terminal condition" means a condition caused by injury, disease, or illness from which, to a

reasonable degree of medical certainty:

- (1) there can be no recovery; and
- (2) death will occur from the terminal condition within a short period of time without the provision of life prolonging procedures.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-4-6**

##### **Policy**

Sec. 6. A competent adult has the right to control the decisions relating to the competent adult's medical care, including the decision to have medical or surgical means or procedures calculated to prolong the competent adult's life provided, withheld, or withdrawn.  
*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-4-7**

##### **Consent to medical treatment; immunity from liability for failure to treat patient after refusal of treatment**

Sec. 7. (a) A competent person may consent to or refuse consent for medical treatment, including life prolonging procedures.

(b) No health care provider is required to provide medical treatment to a patient who has refused medical treatment under this section.

(c) No civil or criminal liability is imposed on a health care provider for the failure to provide medical treatment to a patient who has refused the treatment in accordance with this section.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-4-8**

##### **Life prolonging procedures will declarations; living will declarations**

Sec. 8. (a) A person who is of sound mind and is at least eighteen (18) years of age may execute a life prolonging procedures will declaration under section 11 of this chapter or a living will declaration under section 10 of this chapter.

(b) A declaration under section 10 or 11 of this chapter must meet the following conditions:

- (1) Be voluntary.
- (2) Be in writing.
- (3) Be signed by the person making the declaration or by another person in the declarant's presence and at the declarant's express direction.
- (4) Be dated.
- (5) Be signed in the presence of at least two (2) competent witnesses who are at least eighteen (18) years of age.

(c) A witness to a living will declaration under subsection (b)(5) may not meet any of the following conditions:

- (1) Be the person who signed the declaration on behalf of and at the direction of the declarant.

- (2) Be a parent, spouse, or child of the declarant.
- (3) Be entitled to any part of the declarant's estate whether the declarant dies testate or intestate, including whether the witness could take from the declarant's estate if the declarant's will is declared invalid.
- (4) Be directly financially responsible for the declarant's medical care.

For the purposes of subdivision (3), a person is not considered to be entitled to any part of the declarant's estate solely by virtue of being nominated as a personal representative or as the attorney for the estate in the declarant's will.

(d) The living will declaration of a person diagnosed as pregnant by the attending physician has no effect during the person's pregnancy.

(e) The life prolonging procedures will declarant or the living will declarant shall notify the declarant's attending physician of the existence of the declaration. An attending physician who is notified shall make the declaration or a copy of the declaration a part of the declarant's medical records.

(f) A living will declaration under section 10 of this chapter:

- (1) does not require the physician to use, withhold, or withdraw life prolonging procedures but is presumptive evidence of the patient's desires concerning the use, withholding, or withdrawal of life prolonging procedures under this chapter; and
- (2) shall be given great weight by the physician in determining the intent of the patient who is mentally incompetent.

(g) A life prolonging procedures will declaration under section 11 of this chapter does require the physician to use life prolonging procedures as requested.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-4-9**

##### **Forms of declaration; requisites**

Sec. 9. A declaration must be substantially in the form set forth in either section 10 or 11 of this chapter, but the declaration may include additional, specific directions. The invalidity of any additional, specific directions does not affect the validity of the declaration.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-4-10**

##### **Form of living will declaration**

Sec. 10. The following is the living will declaration form:

##### **LIVING WILL DECLARATION**

Declaration made this \_\_\_\_ day of \_\_\_\_\_ (month, year). I, \_\_\_\_\_, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my desires that my dying shall not be artificially prolonged under the circumstances set forth below, and I declare:

If at any time my attending physician certifies in writing that: (1) I have an incurable injury, disease, or illness; (2) my death will occur within a short time; and (3) the use of life prolonging procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the performance or provision of any medical procedure or medication necessary to provide me with comfort care or to alleviate pain, and, if I have so indicated below, the provision of artificially supplied nutrition and hydration. (Indicate your choice by initialling or making your mark before signing this declaration):

\_\_\_\_\_ I wish to receive artificially supplied nutrition and hydration, even if the effort to sustain life is futile or excessively burdensome to me.

\_\_\_\_\_ I do not wish to receive artificially supplied nutrition and hydration, if the effort to sustain life is futile or excessively burdensome to me.

\_\_\_\_\_ I intentionally make no decision concerning artificially supplied nutrition and hydration, leaving the decision to my health care representative appointed under IC 16-36-1-7 or my attorney in fact with health care powers under IC 30-5-5.

In the absence of my ability to give directions regarding the use of life prolonging procedures, it is my intention that this declaration be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of the refusal.

I understand the full import of this declaration.

Signed \_\_\_\_\_

\_\_\_\_\_  
City, County, and State of Residence

The declarant has been personally known to me, and I believe (him/her) to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not a parent, spouse, or child of the declarant. I am not entitled to any part of the declarant's estate or directly financially responsible for the declarant's medical care. I am competent and at least eighteen (18) years of age.

Witness \_\_\_\_\_ Date \_\_\_\_\_

Witness \_\_\_\_\_ Date \_\_\_\_\_

*As added by P.L.2-1993, SEC.19. Amended by P.L.99-1994, SEC.2.*

#### **IC 16-36-4-11**

##### **Form of life prolonging procedures will declaration**

Sec. 11. The following is the life prolonging procedures will declaration form:

##### **LIFE PROLONGING PROCEDURES DECLARATION**

Declaration made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year). I, \_\_\_\_\_, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my desire that if at any time I have an incurable injury, disease, or illness determined to be

a terminal condition I request the use of life prolonging procedures that would extend my life. This includes appropriate nutrition and hydration, the administration of medication, and the performance of all other medical procedures necessary to extend my life, to provide comfort care, or to alleviate pain.

In the absence of my ability to give directions regarding the use of life prolonging procedures, it is my intention that this declaration be honored by my family and physician as the final expression of my legal right to request medical or surgical treatment and accept the consequences of the request.

I understand the full import of this declaration.

Signed \_\_\_\_\_

\_\_\_\_\_  
City, County, and State of Residence

The declarant has been personally known to me, and I believe (him/her) to be of sound mind. I am competent and at least eighteen (18) years of age.

Witness \_\_\_\_\_ Date \_\_\_\_\_

Witness \_\_\_\_\_ Date \_\_\_\_\_

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-4-12**

##### **Revocation of living will declaration or life prolonging procedures will declaration**

Sec. 12. (a) A living will declaration or a life prolonging procedures will declaration may be revoked at any time by the declarant by any of the following:

(1) A signed, dated writing.

(2) Physical cancellation or destruction of the declaration by the declarant or another in the declarant's presence and at the declarant's direction.

(3) An oral expression of intent to revoke.

(b) A revocation is effective when communicated to the attending physician.

(c) No civil or criminal liability is imposed upon a person for failure to act upon a revocation unless the person had actual knowledge of the revocation.

(d) The revocation of a life prolonging procedures will declaration is not evidence that the declarant desires to have life prolonging procedures withheld or withdrawn.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-4-13**

##### **Certification of qualified patient; procedure where physician refuses to honor declaration**

Sec. 13. (a) The attending physician shall immediately certify in writing that a person is a qualified patient if the following conditions are met:

(1) The attending physician has diagnosed the patient as having

a terminal condition.

(2) The patient has executed a living will declaration or a life prolonging procedures will declaration in accordance with this chapter and was of sound mind at the time of the execution.

(b) The attending physician shall include a copy of the certificate in the patient's medical records.

(c) It is lawful for the attending physician to withhold or withdraw life prolonging procedures from a qualified patient if that patient properly executed a living will declaration under this chapter.

(d) A health care provider or an employee under the direction of a health care provider who:

(1) in good faith; and

(2) in accordance with reasonable medical standards;

participates in the withholding or withdrawal of life prolonging procedures from a qualified patient who has executed a living will declaration in accordance with this chapter is not subject to criminal or civil liability and may not be found to have committed an act of unprofessional conduct.

(e) An attending physician who refuses to use, withhold, or withdraw life prolonging procedures from a qualified patient shall transfer the qualified patient to another physician who will honor the patient's living will declaration or life prolonging procedures will declaration unless:

(1) the physician has reason to believe the declaration was not validly executed or there is evidence that the patient no longer intends the declaration to be enforced; and

(2) the patient is presently unable to validate the declaration.

(f) If the attending physician, after reasonable investigation, finds no other physician willing to honor the patient's declaration, the attending physician may refuse to withhold or withdraw life prolonging procedures.

(g) If the attending physician does not transfer a patient for the reason set forth in subsection (e), the physician shall attempt to ascertain the patient's intention and attempt to determine the validity of the declaration by consulting with any of the following individuals who are reasonably available, willing, and competent to act:

(1) The judicially appointed guardian of the person of the patient if one has been appointed. This subdivision does not require the appointment of a guardian so that a treatment decision can be made under this section.

(2) The person or persons designated by the patient in writing to make the treatment decision.

(3) The patient's spouse.

(4) An adult child of the patient or, if the patient has more than one (1) adult child, by a majority of the children who are reasonably available for consultation.

(5) The parents of the patient.

(6) An adult sibling of the patient or, if the patient has more than one (1) adult sibling, by a majority of the siblings who are



reasonably available for consultation.

(7) The patient's clergy or others with firsthand knowledge of the patient's intention.

The individuals described in subdivisions (1) through (7) shall act in the best interest of the patient and shall be guided by the patient's express or implied intentions, if known.

(h) The physician shall list the names of the individuals described in subsection (g) who were consulted and the information received in the patient's medical records.

(i) If the attending physician determines from the information received under subsection (g) that the qualified patient intended to execute a valid living will declaration, the physician may either:

(1) withhold or withdraw life prolonging procedures, with the concurrence of one (1) other physician, as documented in the patient's medical records; or

(2) request a court of competent jurisdiction to appoint a guardian for the patient to make the consent decision on behalf of the patient.

*As added by P.L.2-1993, SEC.19. Amended by P.L.99-1994, SEC.3.*

#### **IC 16-36-4-14**

##### **Presumptions**

Sec. 14. If the qualified patient who executed a living will declaration is incompetent at the time of the decision to withhold or withdraw life prolonging procedures, a living will declaration executed in accordance with this chapter is presumed to be valid. For purposes of this chapter, a health care provider may presume in the absence of actual notice to the contrary that the declarant was of sound mind when the living will declaration was executed. The fact that the declarant executed a declaration may not be considered as an indication of a declarant's mental incompetency.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-4-15**

##### **Cancellation or destruction of declaration; falsification or forgery of revocation of another's declaration; offense**

Sec. 15. A person who knowingly or intentionally:

(1) physically cancels or destroys a living will declaration or a life prolonging procedures will declaration without the declarant's consent; or

(2) falsifies or forges a revocation of another person's living will declaration or life prolonging procedures will declaration;

commits a Level 6 felony.

*As added by P.L.2-1993, SEC.19. Amended by P.L.158-2013, SEC.236.*

#### **IC 16-36-4-16**

##### **Falsification or forgery of declaration; concealment or withholding of revocation of declaration; offense**

Sec. 16. A person who knowingly or intentionally:

- (1) falsifies or forges the living will declaration of another person with intent to cause withholding or withdrawal of life prolonging procedures; or
- (2) conceals or withholds personal knowledge of the revocation of a living will declaration with intent to cause a withholding or withdrawal of life prolonging procedures;

commits a Level 5 felony.

*As added by P.L.2-1993, SEC.19. Amended by P.L.158-2013, SEC.237.*

#### **IC 16-36-4-17**

##### **Effect of living will or life prolonging procedures will declaration; suicide; life insurance**

Sec. 17. (a) A death caused by the withholding or withdrawal of life prolonging procedures in accordance with this chapter does not constitute a suicide.

(b) The execution of a living will declaration or a life prolonging procedures will declaration under this chapter does not:

- (1) affect the sale or issuance of any life insurance policy; or
- (2) modify the terms of a policy in force when the declaration is executed.

(c) A policy of life insurance is not legally impaired or invalidated by the withholding or withdrawal of life prolonging procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(d) A person may not require another person to execute a living will declaration or a life prolonging procedures will declaration as a condition for being insured for or receiving health care services.

(e) This chapter does not impair or supersede any legal right or legal responsibility that any person may have to effect the withholding or withdrawal of life prolonging procedures in any lawful manner.

(f) A person who has been found:

- (1) guilty; or
- (2) guilty but mentally ill;

of an offense described in section 16 of this chapter is subject to IC 29-1-2-12.1.

*As added by P.L.2-1993, SEC.19.*

#### **IC 16-36-4-18**

##### **Presumption of intent to consent to withholding or withdrawal of life prolonging procedures**

Sec. 18. This chapter creates no presumption concerning the intention of a person who has not executed a living will declaration to consent to the withholding or withdrawal of life prolonging procedures if a terminal condition exists.

*As added by P.L.2-1993, SEC.19.*

**IC 16-36-4-19****Euthanasia distinguished**

Sec. 19. This chapter does not authorize euthanasia or any affirmative or deliberate act or omission to end life other than to permit the natural process of dying, including the withholding or withdrawing of life prolonging procedures under this chapter.

*As added by P.L.2-1993, SEC.19.*

**IC 16-36-4-20****Intervening forces; proximate causation**

Sec. 20. The act of withholding or withdrawing life prolonging procedures, when done under:

- (1) a living will declaration made under this chapter;
- (2) a court order or decision of a court appointed guardian; or
- (3) a good faith medical decision by the attending physician that the patient has a terminal condition;

is not an intervening force and does not affect the chain of proximate cause between the conduct of any person that placed the patient in a terminal condition and the patient's death.

*As added by P.L.2-1993, SEC.19.*

**IC 16-36-4-21****Chapter violations by physician; discipline**

Sec. 21. A physician who knowingly violates this chapter is subject to disciplinary sanctions under IC 25-1-9 as if the physician had knowingly violated a rule adopted by the medical licensing board under IC 25-22.5-2-7.

*As added by P.L.2-1993, SEC.19.*

## **IC 16-36-5**

### **Chapter 5. Out of Hospital Do Not Resuscitate Declarations**

#### **IC 16-36-5-1**

##### **"Cardiopulmonary resuscitation" or "CPR"**

Sec. 1. As used in this chapter, "cardiopulmonary resuscitation" or "CPR" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation, including:

- (1) cardiac compression;
- (2) endotracheal intubation and other advanced airway management;
- (3) artificial ventilation;
- (4) defibrillation;
- (5) administration of cardiac resuscitation medications; and
- (6) related procedures.

The term does not include the Heimlich maneuver or a similar procedure used to expel an obstruction from the throat.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-2**

##### **"Competent witness"**

Sec. 2. As used in this chapter, "competent witness" means a person at least eighteen (18) years of age who is not:

- (1) the person who signed an out of hospital DNR declaration on behalf of and at the direction of the declarant;
- (2) a parent, spouse, or child of the declarant;
- (3) entitled to any part of the declarant's estate; or
- (4) directly financially responsible for the declarant's medical care.

For purposes of subdivision (3), a person is not considered to be entitled to any part of the declarant's estate solely by virtue of being nominated as a personal representative or as the attorney for the estate in the declarant's will.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-3**

##### **"Declarant"**

Sec. 3. As used in this chapter, "declarant" means a person:

- (1) who has executed an out of hospital DNR declaration under section 11(a) of this chapter; or
- (2) for whom a representative has executed an out of hospital DNR declaration under section 11(b) of this chapter;

and for whom an out of hospital DNR order has been written under section 12 of this chapter.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-4**

##### **"DNR"**

Sec. 4. As used in this chapter, "DNR" means do not resuscitate.  
*As added by P.L.148-1999, SEC.12.*

**IC 16-36-5-5**

**"Out of hospital"**

Sec. 5. As used in this chapter, "out of hospital" refers to a location other than an acute care hospital licensed under IC 16-21-2.  
*As added by P.L.148-1999, SEC.12. Amended by P.L.24-2011, SEC.1.*

**IC 16-36-5-6**

**"Out of hospital DNR declaration and order"**

Sec. 6. As used in this chapter, "out of hospital DNR declaration and order" means a document executed under sections 11 and 12 of this chapter.  
*As added by P.L.148-1999, SEC.12.*

**IC 16-36-5-7**

**"Out of hospital DNR identification device"**

Sec. 7. As used in this chapter, "out of hospital DNR identification device" means a device developed by the emergency medical services commission under section 17 of this chapter.  
*As added by P.L.148-1999, SEC.12.*

**IC 16-36-5-8**

**"Qualified person"**

Sec. 8. As used in this chapter, "qualified person" means an individual certified as a qualified person under section 10 of this chapter.  
*As added by P.L.148-1999, SEC.12.*

**IC 16-36-5-9**

**"Representative"**

Sec. 9. As used in this chapter, "representative" means a person's:  
(1) legal guardian or other court appointed representative responsible for making health care decisions for the person;  
(2) health care representative under IC 16-36-1; or  
(3) attorney in fact for health care appointed under IC 30-5-5-16.  
*As added by P.L.148-1999, SEC.12.*

**IC 16-36-5-10**

**Certification as qualified person**

Sec. 10. An attending physician may certify that a patient is a qualified person if the attending physician determines, in accordance with reasonable medical standards, that one (1) of the following conditions is met:  
(1) The person has a terminal condition (as defined in IC 16-36-4-5).

- (2) The person has a medical condition such that, if the person were to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or within a short period the person would experience repeated cardiac or pulmonary failure resulting in death.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-11**

##### **Execution of declaration**

Sec. 11. (a) A person who is of sound mind and at least eighteen (18) years of age may execute an out of hospital DNR declaration.

(b) A person's representative may execute an out of hospital DNR declaration for the person under this chapter only if the person is:

- (1) at least eighteen (18) years of age; and
- (2) incompetent.

(c) An out of hospital DNR declaration must meet the following conditions:

- (1) Be voluntary.
- (2) Be in writing.
- (3) Be signed by the person making the declaration or by another person in the declarant's presence and at the declarant's express direction.
- (4) Be dated.
- (5) Be signed in the presence of at least two (2) competent witnesses.

(d) An out of hospital DNR declaration must be issued on the form specified in section 15 of this chapter.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-12**

##### **Issuance of DNR order**

Sec. 12. An out of hospital DNR order:

- (1) may be issued only by the declarant's attending physician; and
- (2) may be issued only if both of the following apply:
  - (A) The attending physician has determined the patient is a qualified person.
  - (B) The patient has executed an out of hospital DNR declaration under section 11 of this chapter.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-13**

##### **Transfer of patient to another physician**

Sec. 13. (a) An attending physician who does not issue an out of hospital DNR order for a patient who is a qualified person may transfer the patient to another physician, who may issue an out of hospital DNR order, unless:

- (1) the attending physician has reason to believe the patient's declaration was not validly executed, or there is evidence the

- patient no longer intends the declaration to be enforced; and
- (2) the patient is unable to validate the declaration.

(b) Notwithstanding section 10 of this chapter, if an attending physician, after reasonable investigation, does not find any other physician willing to honor the patient's out of hospital DNR declaration and issue an out of hospital DNR order, the attending physician may refuse to issue an out of hospital DNR order.

(c) If the attending physician does not transfer a patient under subsection (a), the attending physician may attempt to ascertain the patient's intent and attempt to determine the validity of the declaration by consulting with any of the following individuals who are reasonably available, willing, and competent to act:

- (1) A court appointed guardian of the patient, if one has been appointed. This subdivision does not require the appointment of a guardian so that a treatment decision may be made under this section.
- (2) A person designated by the patient in writing to make a treatment decision.
- (3) The patient's spouse.
- (4) An adult child of the patient or a majority of any adult children of the patient who are reasonably available for consultation.
- (5) An adult sibling of the patient or a majority of any adult siblings of the patient who are reasonably available for consultation.
- (6) The patient's clergy.
- (7) Another person who has firsthand knowledge of the patient's intent.

(d) The individuals described in subsection (c)(1) through (c)(7) shall act in the best interest of the patient and shall follow the patient's express or implied intent, if known.

(e) The attending physician acting under subsection (c) shall list the names of the individuals described in subsection (c) who were consulted and include the information received in the patient's medical file.

(f) If the attending physician determines from the information received under subsection (c) that the patient intended to execute a valid out of hospital DNR declaration, the attending physician may:

- (1) issue an out of hospital DNR order, with the concurrence of at least one (1) physician documented in the patient's medical file; or
- (2) request a court to appoint a guardian for the patient to make the consent decision on behalf of the patient.

(g) An out of hospital DNR order must be issued on the form specified in section 15 of this chapter.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-14**

#### **Effect of declaration during pregnancy**

Sec. 14. An out of hospital DNR declaration and order of a declarant known to be pregnant has no effect during the declarant's pregnancy.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-15**

##### **Form**

Sec. 15. An out of hospital DNR declaration and order must be in substantially the following form:

##### **OUT OF HOSPITAL DO NOT RESUSCITATE DECLARATION AND ORDER**

This declaration and order is effective on the date of execution and remains in effect until the death of the declarant or revocation.

OUT OF HOSPITAL DO NOT RESUSCITATE DECLARATION  
Declaration made this \_\_\_\_ day of \_\_\_\_\_. I, \_\_\_\_\_, being of sound mind and at least eighteen (18) years of age, willfully and voluntarily make known my desires that my dying shall not be artificially prolonged under the circumstances set forth below. I declare:

My attending physician has certified that I am a qualified person, meaning that I have a terminal condition or a medical condition such that, if I suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or within a short period I would experience repeated cardiac or pulmonary failure resulting in death.

I direct that, if I experience cardiac or pulmonary failure in a location other than an acute care hospital or a health facility, cardiopulmonary resuscitation procedures be withheld or withdrawn and that I be permitted to die naturally. My medical care may include any medical procedure necessary to provide me with comfort care or to alleviate pain.

I understand that I may revoke this out of hospital DNR declaration at any time by a signed and dated writing, by destroying or canceling this document, or by communicating to health care providers at the scene the desire to revoke this declaration.

I understand the full import of this declaration.

Signed \_\_\_\_\_

Printed name \_\_\_\_\_

City and State of Residence \_\_\_\_\_

The declarant is personally known to me, and I believe the declarant to be of sound mind. I did not sign the declarant's signature above, for, or at the direction of, the declarant. I am not a parent, spouse, or child of the declarant. I am not entitled to any part of the declarant's estate or directly financially responsible for the declarant's medical care. I am competent and at least eighteen (18) years of age.

Witness \_\_\_\_\_ Printed name \_\_\_\_\_ Date \_\_\_\_\_

Witness \_\_\_\_\_ Printed name \_\_\_\_\_ Date \_\_\_\_\_

##### **OUT OF HOSPITAL DO NOT RESUSCITATE ORDER**

I, \_\_\_\_\_, the attending physician of



\_\_\_\_\_, have certified the declarant as a qualified person to make an out of hospital DNR declaration, and I order health care providers having actual notice of this out of hospital DNR declaration and order not to initiate or continue cardiopulmonary resuscitation procedures on behalf of the declarant, unless the out of hospital DNR declaration is revoked.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Printed name \_\_\_\_\_

Medical license number \_\_\_\_\_

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-16**

##### **Copies of declaration and order**

Sec. 16. Copies of the out of hospital DNR declaration and order must be kept:

(1) by the declarant's attending physician in the declarant's medical file; and

(2) by the declarant or the declarant's representative.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-17**

##### **Identification devices**

Sec. 17. (a) The emergency medical services commission shall develop an out of hospital DNR identification device that must be:

(1) a necklace or bracelet; and

(2) inscribed with:

(A) the declarant's name;

(B) the declarant's date of birth; and

(C) the words "Do Not Resuscitate".

(b) An out of hospital DNR identification device may be created for a declarant only after an out of hospital DNR declaration and order has been executed by a declarant and an attending physician.

(c) The device developed under subsection (a) is not a substitute for the out of hospital DNR declaration and order.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-18**

##### **Revocation**

Sec. 18. (a) A declarant may at any time revoke an out of hospital DNR declaration and order by any of the following:

(1) A signed, dated writing.

(2) Physical cancellation or destruction of the declaration and order by the declarant or another in the declarant's presence and at the declarant's direction.

(3) An oral expression by the declarant of intent to revoke.

(b) A declarant's representative may revoke an out of hospital DNR declaration and order under this chapter only if the declarant is incompetent.

(c) A revocation is effective upon communication to a health care

provider.

(d) A health care provider to whom the revocation of an out of hospital DNR declaration and order is communicated shall immediately notify the declarant's attending physician, if known, of the revocation.

(e) An attending physician notified of the revocation of an out of hospital DNR declaration and order shall immediately:

- (1) add the revocation to the declarant's medical file, noting the time, date, and place of revocation, if known, and the time, date, and place that the physician was notified;
- (2) cancel the out of hospital DNR declaration and order by entering the word "VOID" on each page of the out of hospital DNR declaration and order in the declarant's medical file; and
- (3) notify any health care facility staff responsible for the declarant's care of the revocation.

*As added by P.L.148-1999, SEC.12.*

### **IC 16-36-5-19**

#### **Health care provider duties**

Sec. 19. (a) A health care provider shall withhold or discontinue CPR to a patient in an out of hospital location if the health care provider has actual knowledge of:

- (1) an original or a copy of a signed out of hospital DNR declaration and order executed by the patient; or
- (2) an out of hospital DNR identification device worn by the patient or in the patient's possession.

(b) A health care provider shall disregard an out of hospital DNR declaration and order and perform CPR if:

- (1) the declarant is conscious and states a desire for resuscitative measures;
- (2) the health care provider believes in good faith that the out of hospital DNR declaration and order has been revoked;
- (3) the health care provider is ordered by the attending physician to disregard the out of hospital DNR declaration and order; or
- (4) the health care provider believes in good faith that the out of hospital DNR declaration and order must be disregarded to avoid verbal or physical confrontation at the scene.

(c) A health care provider transporting a declarant shall document on the transport form:

- (1) the presence of an out of hospital DNR declaration and order;
- (2) the attending physician's name; and
- (3) the date the out of hospital DNR declaration and order was signed.

(d) An out of hospital DNR identification device must accompany a declarant whenever the declarant is transported.

*As added by P.L.148-1999, SEC.12.*

### **IC 16-36-5-20**

**Health care provider liability**

Sec. 20. A health care provider who in good faith and in accordance with reasonable medical standards:

(1) participates in the withholding or withdrawal of CPR from a declarant:

(A) by whom an out of hospital DNR declaration and order has been executed under this chapter; or

(B) who has revoked an out of hospital DNR declaration and order when the health care provider has no notice of the revocation; or

(2) provides CPR to a declarant:

(A) when the health care provider has no notice of the out of hospital DNR declaration and order; or

(B) after a revocation of an out of hospital DNR declaration and order;

is not subject to criminal or civil liability and may not be found to have committed an act of unprofessional conduct.

*As added by P.L.148-1999, SEC.12.*

**IC 16-36-5-21****Presumption of validity**

Sec. 21. (a) If a declarant is incompetent at the time of the decision to withhold or withdraw CPR, an out of hospital DNR declaration and order executed under this chapter is presumed to be valid.

(b) For purposes of this chapter, a health care provider may presume in the absence of actual notice to the contrary that the declarant was of sound mind when the out of hospital DNR declaration and order was executed.

(c) The fact that a declarant executed an out of hospital declaration may not be considered as an indication of the declarant's mental incompetency.

*As added by P.L.148-1999, SEC.12.*

**IC 16-36-5-22****Petition for review**

Sec. 22. (a) A person may challenge the validity of an out of hospital DNR declaration and order by filing a petition for review in a court in the county in which the declarant resides.

(b) A petition filed under subsection (a) must include the name and address of the declarant's attending physician.

(c) A court in which a petition is filed under subsection (a) may declare an out of hospital DNR declaration and order void if the court finds that the out of hospital DNR declaration and order was executed:

(1) when the declarant was incapacitated due to insanity, mental illness, mental deficiency, duress, undue influence, fraud, excessive use of drugs, confinement, or other disability;

(2) contrary to the declarant's wishes; or

(3) when the declarant was not a qualified person.

(d) If a court finds that the out of hospital DNR declaration and order is void, the court shall cause notice of the finding to be sent to the declarant's attending physician.

(e) Upon notice under subsection (d), the declarant's attending physician shall follow the procedures under section 18(e) of this chapter.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-23**

##### **Effect upon life insurance policies**

Sec. 23. (a) A death caused by the withholding or withdrawal of CPR under this chapter does not constitute a suicide.

(b) The execution of an out of hospital DNR declaration and order under this chapter does not affect the sale, issuance, or terms of a life insurance policy.

(c) A policy of life insurance is not legally impaired or invalidated by the execution of an out of hospital DNR declaration and order or by the withholding or withdrawal of CPR from an insured declarant, notwithstanding any term of the policy to the contrary.

(d) An out of hospital DNR declaration and order may not be considered in the establishment of insurance premiums for a declarant.

(e) A person may not require another person to execute an out of hospital DNR declaration and order as a condition for being insured for or receiving health care services.

(f) This chapter does not impair or supersede any legal right or legal responsibility that a person may have to effect the withholding or withdrawal of CPR in a lawful manner.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-24**

##### **Intent of person without declaration not presumed**

Sec. 24. This chapter does not create any presumption concerning the intent of a person who has not executed an out of hospital DNR declaration and order to consent to the withholding or withdrawal of CPR if a terminal condition exists, or if a medical condition exists such that the outcome of performing CPR would have the results specified in section 10(2) of this chapter.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-25**

##### **Euthanasia not authorized**

Sec. 25. This chapter does not authorize euthanasia or any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-26**

##### **Effect upon chain of proximate cause**

Sec. 26. The act of withholding or withdrawing CPR, when done under:

- (1) an out of hospital DNR declaration and order issued under this chapter;
- (2) a court order or decision of a court appointed guardian; or
- (3) a good faith medical decision by the attending physician that the patient has a terminal illness;

is not an intervening force and does not affect the chain of proximate cause between the conduct of a person that placed the patient in a terminal condition and the patient's death.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-27**

##### **Destruction of declaration; forgery of revocation**

Sec. 27. A person who knowingly or intentionally:

- (1) physically cancels or destroys an out of hospital DNR declaration and order without the declarant's consent;
- (2) physically cancels or destroys an out of hospital DNR declaration and order without the declarant's representative's consent if the declarant is incompetent; or
- (3) falsifies or forges a revocation of another person's out of hospital DNR declaration and order;

commits a Class B misdemeanor.

*As added by P.L.148-1999, SEC.12.*

#### **IC 16-36-5-28**

##### **Deception with intent to cause withholding of CPR**

Sec. 28. (a) A person who knowingly or intentionally:

- (1) falsifies or forges the out of hospital DNR declaration and order of another person with intent to cause the withholding or withdrawal of CPR; or
- (2) conceals or withholds personal knowledge of the revocation of an out of hospital DNR declaration and order with intent to cause the withholding or withdrawal of CPR;

commits a Level 5 felony.

(b) A person who commits an offense described in this section is subject to IC 29-1-2-12.1.

*As added by P.L.148-1999, SEC.12. Amended by P.L.158-2013, SEC.238.*

## **IC 16-36-6**

### **Chapter 6. Physician Order for Scope of Treatment (POST)**

#### **IC 16-36-6-1**

##### **"Consent"**

Sec. 1. As used in this chapter, "consent" means authorization to provide, withhold, or withdraw treatment.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-2**

##### **"Declarant"**

Sec. 2. As used in this chapter, "declarant" means a qualified person:

(1) who has completed a POST form under section 7(a)(1) of this chapter; or

(2) for whom a representative has completed a POST form under section 7(a)(2) of this chapter;

and whose treating physician has executed a POST form under section 8 of this chapter.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-3**

##### **"Life prolonging procedure"**

Sec. 3. (a) As used in this chapter, "life prolonging procedure" means any medical procedure, treatment, or intervention that does the following:

(1) Uses mechanical or other artificial means to sustain, restore, or supplant a vital function.

(2) Serves to prolong the dying process.

(b) The term does not include the performance or provision of any medical procedure or medication necessary to provide comfort care or to alleviate pain.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-4**

##### **"POST form"**

Sec. 4. As used in this chapter, "POST form" refers to a physician order for scope of treatment (POST) form developed by the state department under section 9 of this chapter.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-5**

##### **"Qualified person"**

Sec. 5. As used in this chapter, "qualified person" refers to an individual who has at least one (1) of the following:

(1) An advanced chronic progressive illness.

(2) An advanced chronic progressive frailty.

(3) A condition caused by injury, disease, or illness from which,

to a reasonable degree of medical certainty:

(A) there can be no recovery; and

(B) death will occur from the condition within a short period without the provision of life prolonging procedures.

(4) A medical condition that, if the person were to suffer cardiac or pulmonary failure, resuscitation would be unsuccessful or within a short period the person would experience repeated cardiac or pulmonary failure resulting in death.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-6**

##### **"Representative"**

Sec. 6. As used in this chapter, "representative" means an individual described in section 7(a)(2) of this chapter.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-7**

##### **Individuals who may complete a POST form; requirements; representative acting in good faith**

Sec. 7. (a) The following individuals may complete a POST form:

(1) A qualified person who is:

(A) either:

(i) at least eighteen (18) years of age; or

(ii) less than eighteen (18) years of age but authorized to consent under IC 16-36-1-3(a)(2); and

(B) of sound mind.

(2) A qualified person's representative, if the qualified person:

(A) is less than eighteen (18) years of age and is not authorized to consent under IC 16-36-1-3(a)(2); or

(B) has been determined to be incapable of making decisions about the qualified person's health care by a treating physician acting in good faith and the representative has been:

(i) appointed by the individual under IC 16-36-1-7 to serve as the individual's health care representative;

(ii) authorized to act under IC 30-5-5-16 and IC 30-5-5-17 as the individual's attorney in fact with authority to consent to or refuse health care for the individual;

(iii) appointed by a court as the individual's health care representative under IC 16-36-1-8; or

(iv) appointed by a court as the guardian of the person with the authority to make health care decisions under IC 29-3.

(b) In order to complete a POST form, a person described in subsection (a) and the qualified person's treating physician or the physician's designee must do the following:

(1) Discuss the qualified person's goals and treatment options available to the qualified person based on the qualified person's health.

(2) Complete the POST form, to the extent possible, based on

the qualified person's preferences determined during the discussion in subdivision (1).

(c) When completing a POST form on behalf of a qualified person, a representative shall act:

(1) in good faith; and

(2) in:

(A) accordance with the qualified person's express or implied intentions, if known; or

(B) the best interest of the qualified person, if the qualified person's express or implied intentions are not known.

(d) A copy of the executed POST form shall be maintained in the qualified person's medical file.

*As added by P.L.164-2013, SEC.8. Amended by P.L.141-2014, SEC.16.*

#### **IC 16-36-6-8**

##### **Execution by treating physician; signature**

Sec. 8. (a) A POST form may be executed only by an individual's treating physician and only if:

(1) the treating physician has determined that:

(A) the individual is a qualified person; and

(B) the medical orders contained in the individual's POST form are reasonable and medically appropriate for the individual; and

(2) the qualified person or representative has completed the POST form in accordance with section 7 of this chapter.

(b) The:

(1) treating physician; and

(2) qualified person or representative;

must sign and date the POST form for the POST form to be effective.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-9**

##### **State department development of POST form; requirements; Internet; not liable**

Sec. 9. (a) The state department shall develop a standardized POST form and distribute the POST form.

(b) The POST form developed under this section must include the following:

(1) A medical order specifying whether cardiopulmonary resuscitation (CPR) should be performed if the qualified person is in cardiopulmonary arrest.

(2) A medical order concerning the level of medical intervention that should be provided to the qualified person, including the following:

(A) Comfort measures.

(B) Limited additional interventions.

(C) Full intervention.

(3) A medical order specifying whether antibiotics should be



provided to the qualified person.

(4) A medical order specifying whether artificially administered nutrition should be provided to the qualified person.

(5) A signature line for the treating physician, including the following information:

(A) The physician's printed name.

(B) The physician's telephone number.

(C) The physician's medical license number.

(D) The date of the physician's signature.

As used in this subdivision, "signature" includes an electronic or physician controlled stamp signature.

(6) A signature line for the qualified person or representative, including the following information:

(A) The qualified person's or representative's printed name.

(B) The relationship of the representative signing the POST form to the qualified person covered by the POST form.

(C) The date of the signature.

(7) A section presenting the option to allow a declarant to appoint a representative (as defined in IC 16-36-1-2) under IC 16-36-1-7 to serve as the declarant's health care representative.

(c) The state department shall place the POST form on its Internet web site.

(d) The state department is not liable for any use or misuse of the POST form.

*As added by P.L.164-2013, SEC.8. Amended by P.L.81-2015, SEC.13.*

#### **IC 16-36-6-10**

##### **Original kept by declarant; copy in medical file**

Sec. 10. (a) The declarant or representative shall keep the original executed POST form. The POST form is considered the personal property of the declarant. The treating physician who executes the POST form shall maintain a copy of the POST form in the declarant's medical records. If the POST form is executed at a health care facility (as defined in IC 16-18-2-161), a copy of the POST form shall be maintained in the health care facility's medical records.

(b) A health care provider or health care facility shall treat a facsimile, paper, or electronic copy of a valid POST form as an original document.

(c) A health care provider, a health care facility, or an entity acting in good faith may not be considered to have knowledge of a POST form solely on the basis of the POST form's entry into a medical record that can be accessed by a person described in this subsection.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-11**

##### **Revocation of POST form; effectiveness; notification**

Sec. 11. (a) A declarant or representative subject to subsection (b)

may at any time revoke a POST form by any of the following:

- (1) A signed and dated writing.
  - (2) Physical cancellation or destruction of the POST form by:
    - (A) the declarant;
    - (B) the representative; or
    - (C) another individual at the direction of the declarant or representative.
  - (3) An oral expression by the declarant or representative of an intent to revoke the POST form.
- (b) A representative may revoke the POST form only if the declarant is incapable of making decisions regarding the declarant's health care.
- (c) A revocation of a POST form under this section is effective upon communication of the revocation to a health care provider.
- (d) Upon communication of the revocation of a POST form under this section, the health care provider shall immediately notify the declarant's treating physician, if known, of the revocation.
- (e) Upon notification of the revocation of a POST form to the treating physician under subsection (d), the declarant's treating physician shall as soon as possible do the following:
- (1) Add the revocation to the declarant's medical record with the following information:
    - (A) The time, date, and place of revocation of the POST form by the declarant, representative, or other individual at the direction of the declarant or representative.
    - (B) The time, date, and place the treating physician was notified of the revocation of the POST form.
  - (2) Cancel the POST form that is being revoked by conspicuously noting in the declarant's medical records that the declarant's POST form has been voided.
  - (3) Notify any health care personnel responsible for the care of the declarant of the revocation of the POST form.
  - (4) Notify the physician who signed the POST form of the revocation through the contact information for the physician indicated on the form.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-12**

##### **Alternative treatment request allowed**

Sec. 12. (a) A declarant, or, subject to subsection (b), a representative, may, at any time, request alternative treatment to the treatment specified on the POST form.

(b) A representative may request alternative treatment only if the declarant is incapable of making decisions concerning the declarant's health care.

(c) A health care provider to whom a request for alternative treatment is communicated shall, as soon as possible, notify the declarant's treating physician, if known, of the request.

(d) The treating physician who is notified under subsection (c) of

a request for alternative treatment shall do the following as soon as possible:

- (1) Include a written, signed note of the request in the declarant's medical records with the following information:
  - (A) The time, date, and place of the request by the declarant or representative.
  - (B) The time, date, and place that the treating physician was notified of the request.
- (2) Review the POST form with the declarant or representative and execute a new POST form, if needed.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-13**

##### **Petition for relief; court authority**

Sec. 13. (a) A health care provider, a health care facility, or an interested person that believes that following the medical orders set forth in the POST form will result in care or treatment, or the withholding of care or treatment, that:

- (1) is inconsistent with the declarant's known preferences; or
- (2) in the absence of the declarant's known preferences, is not in the declarant's best interest;

may seek relief under IC 16-36-1-8 by petitioning the probate court in the county where the declarant is located.

(b) If, in a proceeding sought under subsection (a), a probate court determines that following the medical orders in the declarant's POST form will result in care or treatment, or the withholding or withdrawal of care or treatment, that:

- (1) is inconsistent with the declarant's known preferences; or
- (2) in the absence of the declarant's known preferences, is not in the declarant's best interest;

the probate court may order any of the relief available under IC 16-36-1-8.

*As added by P.L.164-2013, SEC.8. Amended by P.L.81-2015, SEC.14.*

#### **IC 16-36-6-14**

##### **POST form not effective during pregnancy**

Sec. 14. A declarant's executed POST form has no effect during the declarant's pregnancy if the declarant is known to be pregnant.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-15**

##### **Medical orders in POST form effective in all settings; noncompliance; contrary care not required; discussion of order requirement; transfer of care**

Sec. 15. (a) Except as otherwise provided in this chapter, the medical orders included in a POST form executed under this chapter are effective in all settings. A health care provider shall comply with a declarant's POST form that is apparent and immediately available

to the provider unless the provider:

- (1) believes the POST form was not validly executed under this chapter;
- (2) believes in good faith that the declarant, the representative, or another individual at the request of the declarant or representative has revoked the POST form as provided in section 11 of this chapter;
- (3) believes in good faith that the declarant or representative has made a request for alternative treatment as provided in section 12 of this chapter;
- (4) believes it would be medically inappropriate to provide the intervention included in the declarant's POST form; or
- (5) has religious or moral beliefs that conflict with the POST form.

(b) A health care provider is not required to provide medical treatment that is contrary to a declarant's POST form that has been executed in accordance with this chapter.

(c) If a declarant is capable of making health care decisions, the declarant's treating physician, before carrying out or implementing a medical order indicated in the declarant's POST form, shall discuss the order with the declarant to reaffirm or amend the order on the POST form. For purposes of this subsection, a minor who is not authorized to consent to health care under IC 16-36-1-3(a)(2) is not capable of consenting to health care. This subsection applies regardless of whether the POST form was signed by the declarant or representative.

(d) A health care provider who is unable to implement or carry out the orders of a POST form shall transfer care of the declarant to another health care provider who is able to implement or carry out the orders. However, a health care provider who refuses to implement the medical orders included in an executed POST form is not required to transfer care of the declarant if any of the circumstances in subsection (a)(1) through (a)(4) have occurred.

(e) The treating physician is responsible for coordinating the transfer of care of a declarant in the circumstances in subsection (d). If the treating physician, after a reasonable attempt, is unable to find a physician willing to implement or carry out the medical orders included in the declarant's POST form, the treating physician may decline to implement or carry out the medical orders.

(f) If, under this section, the treating physician does not transfer a declarant or implement the medical orders included in the declarant's POST form and the declarant is competent, the treating physician shall attempt to ascertain the declarant's preferences for medical care by discussing the preferences with the declarant. If the declarant is incompetent to act, the treating physician shall attempt to ascertain the declarant's preferences for medical care by consulting with the following individuals:

- (1) The treating physician shall consult with any representative who is available, willing, and competent to act.

(2) If the declarant does not have a representative or if a representative is not available, willing, and competent to act, the treating physician shall consult with any of the following individuals who are available, willing, and competent to act:

(A) The declarant's spouse.

(B) An adult child of the declarant, or, if the declarant has more than one (1) adult child, a majority of the children who are reasonably available for consultation.

(C) A parent of the declarant.

(D) An adult sibling of the declarant, or, if the declarant has more than one (1) adult sibling, a majority of the siblings who are reasonably available for consultation.

(E) An individual with firsthand knowledge of the declarant's intentions.

(g) An individual described in subsection (f) shall act according to the declarant's intentions, if known, or in the best interest of the declarant.

(h) The physician shall list the names of the individuals described in subsection (f) who were consulted and the information received by the individuals in the declarant's medical record.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-16**

##### **Good faith and medical standards; immunity from civil and criminal liability; presumption of compliance**

Sec. 16. (a) A:

(1) health care provider;

(2) health care facility; or

(3) health entity;

or an employee under the direction of a person described in subdivisions (1) through (3) that acts in good faith and in accordance with reasonable medical standards to carry out the orders on a POST form, including a medical order for the withholding or withdrawal of life prolonging procedures, is not subject to criminal or civil liability and may not be found to have committed an act of unprofessional conduct.

(b) A health care provider may presume in the absence of actual notice or evidence to the contrary that a POST form executed in compliance with this chapter is valid and enforceable.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-17**

##### **No modification or alteration of practice of medicine or nursing; prohibition on medically inappropriate treatment**

Sec. 17. (a) This chapter may not be construed to modify or alter any applicable laws, ethics, standards, or protocols for the practice of medicine or nursing, including section 19 of this chapter concerning euthanasia.

(b) A POST form may not be construed to compel or authorize a

health care provider or health care facility to administer medical treatment that is medically inappropriate or prohibited by state or federal law.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-18**

##### **Death not considered suicide; prohibition on compelling completion of POST form; legal rights not superseded; POST form voluntary**

Sec. 18. (a) A death as a result of the withholding or withdrawal of life prolonging procedures in accordance with a declarant's POST form does not constitute a suicide.

(b) A person may not require an individual to complete a POST form as a condition of receiving health care services.

(c) This chapter does not impair or supersede any legal right or legal responsibility that an individual may have to effect the provision, withholding, or withdrawing of care or treatment, including the withholding or withdrawal of life prolonging procedures, in a lawful manner.

(d) Use of a POST form is voluntary. If an individual refuses to complete a POST form, a person described in section 16(a) of this chapter shall document the refusal in the individual's medical records and may not ask the individual again to complete a POST form unless:

(1) required to do so by:

(A) state or federal law or regulation; or

(B) national accrediting entity standards; or

(2) a significant change in condition that is documented in the individual's medical record has occurred.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-19**

##### **No authorization of euthanasia**

Sec. 19. This chapter does not authorize euthanasia or any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

*As added by P.L.164-2013, SEC.8.*

#### **IC 16-36-6-20**

##### **Execution or revocation of POST form does not affect other legal documents or authority**

Sec. 20. The execution or revocation of a POST form by or for a qualified person does not revoke or impair the validity of any of the following:

(1) A power of attorney that is executed by a qualified person when the qualified person is competent.

(2) Health care powers that are granted to an attorney in fact under IC 30-5-5-16 or IC 30-5-5-17.

(3) An appointment of a health care representative that is executed by a qualified person, except to the extent that the

POST form contains a superseding appointment of a new health care representative under section 9(b)(7) of this chapter.

(4) The authority of a health care representative under IC 16-36-1 to consent to health care on behalf of the qualified person.

(5) The authority of an attorney in fact holding health care powers under IC 30-5-5-16 or IC 30-5-5-17 to issue and enforce instructions under IC 30-5-7 concerning the qualified person's health care.

*As added by P.L.164-2013, SEC.8. Amended by P.L.2-2014, SEC.78.*